

1 LAW OFFICES OF RON BOCHNER  
2 Ron K. Bochner - 160093  
3 3333 Bowers Ave., Suite 130  
3 Santa Clara, CA 95054  
4 (408) 200-9890

4 ATTORNEY FOR PLAINTIFF  
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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA-SAN JOSE DIVISION  
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11 NOEMIA CARVALHO, on behalf of  
himself and others similarly situated,

Case No. 5:08-cv-1317 JF

12 Plaintiff,  
13  
14 vs.  
15

DECLARATION OF RON BOCHNER IN  
SUPPORT OF MOTION TO REMAND  
CASE TO STATE COURT

EQUIFAX INFORMATION SERVICES,  
LLC, et al.,  
16

Defendants.

DATE: June 20, 2008  
TIME: 9:00 A.M.  
DEPT.: COURTRoom 3

19 \_\_\_\_\_ /  
20 I, Ron Bochner, declare as follows:

21 1. Defendant Equifax removed this matter to the instant court pursuant to the Class Action  
Fairness Act (“CAFA”), various provisions of the United States Code. It provided two reasons  
23 for doing so: (a) it purported that Ms. Carvalho had testified that the claim of the class members  
could exceed \$25,000 per member [Paras. 15 and 16 of Notice of Removal] (b) the punitive  
25 damages sought would exceed the \$5,000,000 damages threshold [paras. 17 and 18 of Notice of  
Removal].

26 2. The first statement is false and unsupported by admissible evidence in Equifax’s Removal  
papers. Ms. Carvalho informed the defendants at deposition should would not settle her

1 individual case at any sum. Nor could she, as a fiduciary representative of a putative class. She  
2 did not purport to put a value on the class claims at all. Equifax has not shown when it  
3 ascertained the fact that punitive damages could or would exceed \$5,000,000. It appears it must  
4 have been from the date it was served with the complaint. As such, removal is untimely.

5 3. Ms. Carvalho did not testify as asserted at deposition. Defendants attempted to induce Ms.  
6 Carvalho to breach her fiduciary duty as class representative by querying at what dollar figures  
7 she would settle her own, individual matter and to speculate about the value of other class  
8 members claim. She, in keeping with her duty to the class in this matter, refused such  
9 inducements. She never testified as to what she would settle other members claims for, nor could  
10 she. See portions of Carvalho Deposition Testimony, true and correct copies of which are  
11 attached to this Declaration as Exhibit A.

12 4. Here, plaintiff and counsel have expended substantial time conferring about the removal,  
13 reviewing the materials served (five hours), researching and drafting this motion (15 hours) and  
14 will incur costs in researching and drafting future pleadings and appearing for argument on this  
15 matter. The undersigned's hourly rate is \$375.00. Therefore, plaintiff seeks the amount of  
16 \$7,500.00 per 28 USC section 1447(c) and/or Rule 11 and such additional fees and costs as are  
17 incurred as will be set forth in plaintiff's reply brief against Equifax and its counsel.

18

19 I declare under the penalty of perjury that the above is true and correct.

20 Executed at the City and County of Santa Clara this 7<sup>th</sup> day of April, 2008.

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BY \_\_\_\_\_  
RON K. BOCHNER  
Attorney for Plaintiff  
NOEMIA CARVALHO

25

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EXHIBIT A

NOEMIA CARVALHO  
VOLUME 2

03/04/08

1 THE WITNESS: My damage has been made already.

2 BY MR. PERLING:

3 Q So you have not had any additional damages  
4 since February 9 of 2006?

5 A No. I don't know what damages you're talking  
6 about. Damages for seven years. It's already enough;  
7 right?

8 MR. BOCHNER: Well, seven years would include  
9 today, wouldn't it?

10 MR. PERLING: I object to the statements on the  
11 record.

12 BY MR. PERLING:

13 Q Ma'am, the letter says it was for -- to  
14 compensate you for \$25,000 worth of damages.

15 You have not had any -- strike that. I've  
16 already asked that.

17 Well, I know that Experian already asked you  
18 this question. Let me ask it for Equifax.

19 Would you agree to take \$25,000 --

20 MR. BOCHNER: Same objections that we made  
21 before. It's asked and answered.

22 MR. PERLING: Counsel, it is common courtesy to  
23 let the question get on the record before you make your  
24 objection.

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2 making my objections.

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4 interrupt me when I'm asking a question?

5 MR. BOCHNER: You said that it was the same  
6 question that had been asked by Experian before. And  
7 I'm objecting, asked and answered.

8 MR. PERLING: Can I ask my question then?

9 MR. BOCHNER: Yes.

10 MR. PERLING: Thank you.

11 BY MR. PERLING:

12 Q Would you agree to take \$25,000 from Equifax?

13 A No.

14 MR. BOCHNER: Same objection that was made  
15 before. It also violates professional ethics.

16 MR. PERLING: I have not even gotten the  
17 question on the record yet. I've been interrupted now  
18 twice in trying to ask the same question.

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22 the question?

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25 now to resolve this case?

1 A No.

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8 MR. BOCHNER: This is unethical behavior. You  
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10 THE WITNESS: You cannot offer me anything. I  
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12 MR. BOCHNER: Please be quiet while I talk.  
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15 MR. BOCHNER: My objection is this is improper.  
16 You cannot offer a class representative a settlement in  
17 a case to defeat the class certification.

18 Go ahead and answer the question.

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23 A No amount. That's correct.

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Q How about on behalf of the persons whom you purport to represent? Would you take \$25,000 on each of those persons that you claim is similarly situated?

MR. BOCHNER: Asks for a legal conclusion, calls for speculation.

THE WITNESS: No.

BY MR. PERLING:

Q Is that not enough?

A No. I'm not prepared to talk about money. This is not what I'm here for.

Q I just want to make sure the record is clear.

Even \$25,000 apiece would not be enough --

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Q Even \$25,000 apiece would not be enough for you to settle -- to resolve the damages on behalf of the persons that are similarly situated?

MR. BOCHNER: Calls for a legal conclusion, same objections.

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Q Do you know anything about the persons that are similarly situated with regard to their damages?

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11 NOEMIA CARVALHO, on behalf of  
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Case No. 5:08-cv-1317 JF

12 Plaintiff,

PROPOSED ORDER

13 vs.

15 EQUIFAX INFORMATION SERVICES,  
LLC, et al.,

17 Defendants.

DATE: June 20, 2008  
TIME: 9:00 A.M.  
DEPT.: COURTRoom 3

20 This matter came up for hearing on June 20, 2008. Both parties having submitted

21 argument by and through counsel and argument being taken, the court ORDERS as follows:

22 The matter is remanded to the State of California, County of Monterey Superior Court.

23 Removing party Equifax failed to make the requisite showing in support of removal.

24 Defendant Equifax and its counsel of record are sanctioned in the sum of \$\_\_\_\_\_.

25 There was no objectively reasonable basis for seeking removal pursuant to 28 USC section

26 //

//

1 || 1447(c) and/or the filing violated FRCP 11. Payment of sanctions within \_\_\_\_ days.

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4 \_\_\_\_\_, 2008

BY  
JUDGE JEREMY FOGEL

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